

OCT 05 2009

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DAVID CREWS, CLERK
BY 
Deputy

**CONSOLIDATED GRAIN AND BARGE
CO.**

PLAINTIFF

VS.

CIVIL ACTION NO. 4:09cv105-A-S

DEES OIL COMPANY, INC.

DEFENDANT

COMPLAINT

COMES NOW Consolidated Grain and Barge Co., through undersigned counsel, and for its Complaint against Defendant, Dees Oil Company, Inc. states as follows:

1. Plaintiff, Consolidated Grain and Barge Co., (hereinafter CGB) is a corporation organized and existing under laws of the State of Missouri.
2. Defendant, Dees Oil Company, Inc. (hereinafter Dees) at all times pertinent hereto is and was a corporation existing under the laws of Mississippi. Its Registered Agent for service of process is James Michael Dees, 311 Hwy. 15 South, P. O. Box 98, Ripley, Mississippi 38663.
3. Jurisdiction is vested in this Court under diversity of citizenship pursuant to 28 USC §1332 in that Plaintiff is a resident of a state other than Mississippi and Defendant is a resident of Mississippi with the amount in controversy exceeding \$75,000.00.
4. On or about July 21, 2008, Plaintiff and Defendant entered into three contracts (Contract Numbers 5912 for 500,000 pounds, 5913 for 300,000 pounds and 5914 for 500,000 pounds, copies of which are attached as Exhibit "A"), under which CGB agreed to sell and Dees agreed to purchase crude degummed soybean oil for use in the product of fuel

product of fuel commonly known as bio-diesel. Pursuant to the contractual agreements between CGB and Dees, Dees was to pick up the product in Memphis, Tennessee, during the later half on 2009.

5. CGB agreed to sell and Dees agreed to purchase approximately 1.3 million pounds of the product known as crude degummed soy oil. Despite demands by CGB, Dees failed to take delivery of all the product contracted and is indebted to CGB for \$333,215.83, which represents the difference in Market Price, at the time of cancellation of the Contracts together with prejudgment interest, post-judgment interest, attorney's fees and expenses.

6. Pursuant to the Contracts of the parties, Dees was to take delivery of the product during the last half of 2008. Dees only took delivery of 170,000 pounds on Contract No. 5912. The parties agreed to extend the delivery period on the Contract to February 2009. Dees still failed to take delivery of the remaining 1,130,140 pounds under the Contracts before February 2009. After several requests from CGB for Dees to take delivery, Dees advised it would not and CGB cancelled the Contracts. CGB established its loss of market price compared to the Contract prices in the amount of \$333,215.83 together with prejudgment interest, post-judgment interest, attorney's fees and expenses.

7. As a direct proximate cause of the breach of the contractual obligations owed to CGB by Dees, CGB is entitled to a judgment against Dees in the amount of \$333,215.83 together with prejudgment interest, post-judgment interest, attorney's fees and expenses.

8. CGB relied on Dees to its detriment to fulfill its obligations under the contractual agreements between CGB and Dees and as a direct proximate cause of the failure of Dees to honor and fulfill its contractual obligations, CGB is entitled to a judgment for its detrimental reliance against Dees for \$333,215.83 together with prejudgment interest, post-

interest, post-judgment interest, attorney's fees and expenses.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, CGB, prays that this Court will enter its Judgment in favor of Plaintiff and against Defendant, Dees, in the amount of \$333,215.83 together with prejudgment interest, post-judgment interest, attorney's fees and expenses.

RESPECTFULLY SUBMITTED, this the 25th day of September, 2009.

CONSOLIDATED GRAIN AND BARGE CO.

BY: /s/ Joel J. Henderson
JOEL J. HENDERSON, MSB #2264

/s/ Edward D. Lamar
EDWARD D. LAMAR, MSB #1780

OF COUNSEL:

HENDERSON DANTONE, P.A.
 P. O. Box 778
 Greenville, MS 38702-0778
 Telephone: 662-378-3400
 Facsimile: 662-378-3413

CERTIFICATE OF SERVICE

I, Joel J. Henderson, attorney for Plaintiff, Consolidated Grain and Barge Co., do hereby certify that I have on the 25th day of September, 2009 electronically filed a true and correct copy of the above with the Clerk of the Court.

/s/Joel J. Henderson
JOEL J. HENDERSON

Deltacom, Inc.
 850 Ridge Lake Blvd., Ste. 1
 Memphis, TN 38120

Fax 901-761-8499
 Office Phone 901-761-8425
 Residence 901-757-5819
 Residence 843-342-5386

CONFIRMATION NO. 9137
 SELLERS CONTRACT NO 5912
 BUYERS CONTRACT NO

07/21/08

WE ARE PLEASED TO CONFIRM THE FOLLOWING:

SELLER - CONSOLIDATED GRAIN AND BARGE CO.
 P.O. BOX 289
 MT. VERNON, IN 47620-0289

BUYER - Dees Oil Co., Inc.
 Attn: Michael Dees
 P.O. Box 98
 311 City Ave South
 Ripley, MS 38663

COMMODITY - Crude Degummed Soybean Oil

QUANTITY - 500,000 lbs.

PRICE - 64.20 cents per lb. Ex Tank ACBL Memphis, TN

SPECIFICATIONS - NOPA 103-3A

SHIPMENT - September 2008

WEIGHTS & GRADES - Ex Tank Weights & Grades

PAYMENT - Wire transfer prior to pick up

BROKERAGE - 10 cents per cwt.

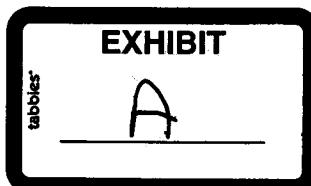
OTHER CONDITIONS

CG&B
 #5912

BY: _____
 BUYER

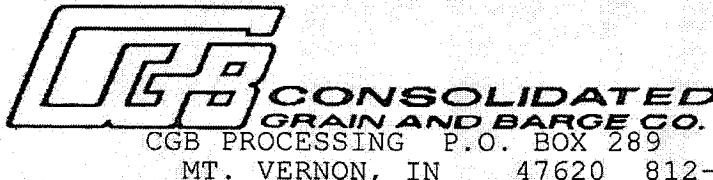
 SELLER

 AS BROKERS ONLY



SPECIAL CONTRACT TERMS

1. This contract shall be governed and construed in accordance with the applicable trading rules of the National Oilseed Processor's Association. Buyer acknowledges familiarity with said rules and except as modified or limited herein agrees to be bound by the terms and conditions thereof.
2. SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED INCLUDING THAT OF FITNESS FOR A PARTICULAR PURPOSE EXCEPT THAT SELLER WARRANTS THE PRODUCE SOLD HEREUNDER SHALL BE OF MERCHANTABLE QUALITY. BUYER ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED BY THE USE OF THE PRODUCT COVERED BY THIS CONTRACT WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS. SELLER SHALL IN NO EVENT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES AND BUYERS REMEDIES SHALL BE LIMITED TO REPLACEMENT OR ADJUSTMENT FOR DEFECTIVE PRODUCT AND IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT.
3. This contract is specifically limited to the terms and conditions stated herein. The terms and provisions set forth herein shall prevail insofar as they may in any way conflict with any terms or conditions of buyers order or confirmation.
4. Sellers performance hereunder, including delivery on the date specified shall be excused where such failure to perform or delay is attributable to any cause or reason beyond its control including but not limited to product shortages, labor trouble, government regulations, transportation difficulties, acts of God, or other causes of like or different character beyond its control.
5. Once placed, an order may not be canceled by buyer except with the written consent of the seller.
6. If any tax, duty, or tariff, or increase thereof, is or shall be assessed or imposed on this transaction or any aspect thereof, or if any change shall be made in the present customs or railway classification of said goods or raw materials or existing freight rates, each such charge or change shall be for buyer's account.
7. Failure on the part of the seller to deliver or perform in accordance with any installment of this contract shall not be a breach of the entire agreement.
8. Seller's weights are to govern settlement. On sales made F.O.B. delivered basis, no allowance for shortage or damage shall be made by seller unless buyer furnishes acknowledgment from the carrier that the same occurred in transit. On sales made F.O.B. seller's plant or warehouse, buyer will, in the event of loss or damage in transit file its own claim with carrier.
9. Buyer waives all claims unless made in writing and delivered to seller within 10 days after receiving the goods. Any action by buyer for a breach of this contract must be commenced within one year after the cause of action has accrued.
10. Any change in price or other terms of this contract caused by government regulations will entitle seller, at its option, to cancel any unshipped portion thereof.
11. Seller warrants that it has complied with all federal laws, regulations, and orders issued pursuant to such laws which govern seller's performance hereunder.
12. In addition to the applicable trading rules of NOPA (National Oilseed Processor's Association) this agreement shall be governed by and construed in accordance with the Uniform Commercial Code and the laws of the State of Indiana.
13. This agreement constitutes the entire agreement between the parties hereof and neither party shall be bound by any statement, representation, or course of dealing not specifically incorporated here.
14. If seller is required to seek Court Action or legal services concerning this Sales Contract, then Seller shall be entitled to its legal costs and attorney fees paid by the wrongful party.
15. Any advance in applicable freight rates taking effect prior to passage of title hereof shall be for Buyer's account.

SALES
CONTRACT
CONFIRMATION

DATE 07/21/08

CONTRACT NUMBER 0005912

SOLD TO:

57001806
 DEES OIL CO INC
 PO BOX 96
 311 CITY AVE SOUTH
 RIPLEY MS 38663

COMMODITY:	DEGUMMED SOYBEAN OIL	TOTAL QUANTITY:	500,000 LBS
TYPE:	PRICED	SCHEDULE 01	SCHED. QUANTITY: 169,860 LBS
DELIVERY TERMS:	FOB MEMPHIS TA	CONTRACT PRICE:	.6420 PER LB
TRANSPORT MODE:	TRUCK	WEIGHTS:	Origin
SHIPMENT:	09/01/08 THRU 09/30/08	GRADES:	Origin

OTHER CONDITIONS:

DELTA COM #9137

MERCHANDISER: BILL McBEE

NOPA Trading Rules to Govern

This contract also includes, and is subject to, the terms and conditions on the reverse side.

Please sign and return one copy to: Consolidated Grain & Barge, P.O. Box 289, Mount Vernon, IN 47620

Consolidated Grain & Barge, Inc.

By	Date
Seller	

By	Date
Buyer	

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5. Once placed, an order may not be canceled by buyer except with the written consent of the seller.
6. If any tax, duty, or tariff, or increase thereof, is or shall be assessed or imposed on this transaction or any aspect thereof, or if any change shall be made in the present customs or railway classification of said goods or raw materials or existing freight rates, each such charge or change shall be for buyer's account.
7. Failure on the part of the seller to deliver or perform in accordance with any installment of this contract shall not be a breach of the entire agreement.
8. Seller's weights are to govern settlement. On sales made F.O.B. delivered basis, no allowance for shortage or damage shall be made by seller unless buyer furnishes acknowledgment from the carrier that the same occurred in transit. On sales made F.O.B. seller's plant or warehouse, buyer will, in the event of loss or damage in transit file its own claim with carrier.
9. Buyer waives all claims unless made in writing and delivered to seller within 10 days after receiving the goods. Any action by buyer for a breach of this contract must be commenced within one year after the cause of action has accrued.
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SALES
CONTRACT
CONFIRMATION

DATE 07/21/08



CONTRACT NUMBER 0005912

SOLD TO:

57001806
 DEES OIL CO INC
 PO BOX 96
 311 CITY AVE SOUTH
 RIPLEY MS 38663

CGB PROCESSING P.O. BOX 289
 MT. VERNON, IN 47620 812-838-6651

TOTAL QUANTITY: 500,000 LBS

COMMODITY: DEGUMMED SOYBEAN OIL SCHEDULE 02
 SCHED. QUANTITY: 330,140 LBS

TYPE: PRICED CONTRACT PRICE: .6420 PER LB

DELIVERY TERMS: FOB MEMPHIS TA

TRANSPORT MODE: TRUCK WEIGHTS: Origin

SHIPMENT: 02/01/09 THRU 02/28/09 GRADES: Origin

OTHER CONDITIONS:

DELTA COM #9137

MERCHANDISER: BILL McBEE

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Consolidated Grain & Barge, Inc.

By

Date

Seller

By

Date

Buyer

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Deltacom, Inc.
 850 Ridge Lake Blvd., Ste. 1
 Memphis, TN 38120

CONFIRMATION NO. 9138
 SELLERS CONTRACT NO. 5913
 BUYERS CONTRACT NO.

Fax 901-761-8499
 Office Phone 901-761-8425
 Residence 901-757-5819
 Residence 843-342-5386

07/21/08

WE ARE PLEASED TO CONFIRM THE FOLLOWING:

SELLER - CONSOLIDATED GRAIN AND BARGE CO.
 P.O. BOX 289
 MT. VERNON, IN 47620-0289

BUYER - Dees Oil Co., Inc.
 Attn: Michael Dees
 P.O. Box 98
 311 City Ave South
 Ripley, MS 38663

COMMODITY - Crude Degummed Soybean Oil

QUANTITY - 300,000 lbs.

CGB
 # 5913

PRICE - 63.46 cents per lb. Ex Tank ACBL Memphis, TN

SPECIFICATIONS - NOPA 103-3A

SHIPMENT - September 2008

WEIGHTS & GRADES - Ex Tank Weights & Grades

PAYMENT - Wire transfer prior to pick up

BROKERAGE - 10 cents per cwt.

OTHER CONDITIONS

BY:

BUYER

SELLER

AS BROKERS ONLY

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15. Any advance in applicable freight rates taking effect prior to passage of title hereof shall be for Buyer's account.

SALES
CONTRACT
CONFIRMATION

CGB PROCESSING P.O. BOX 289

MT. VERNON, IN 47620 812-838-6651

SOLD TO:

57001806
 DEES OIL CO INC
 PO BOX 96
 311 CITY AVE SOUTH
 RIPLEY MS 38663

DATE 07/21/08

CONTRACT NUMBER 0005913

		TOTAL QUANTITY:	300,000 LBS
COMMODITY:	DEGUMMED SOYBEAN OIL	SCHEDULE 01	
		SCHED. QUANTITY:	300,000 LBS
TYPE:	PRICED	CONTRACT PRICE:	.6346 PER LB
DELIVERY TERMS: FOB MEMPHIS TA			
TRANSPORT MODE: TRUCK		WEIGHTS:	Origin
SHIPMENT:	02/01/09 THRU 02/28/09	GRADES:	Origin
OTHER CONDITIONS:			
DELTA COM #9138			

MERCHANDISER: BILL MCBEE

NOPA Trading Rules to Govern

This contract also includes, and is subject to, the terms and conditions on the reverse side.

Please sign and return one copy to: Consolidated Grain & Barge, P.O. Box 289, Mount Vernon, IN 47620

Consolidated Grain & Barge, Inc.

By	Date
Seller	

By	Date
Buyer	

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SALES
CONTRACT
CONFIRMATION



CGB PROCESSING P.O. BOX 289
MT. VERNON, IN 47620 812-838-6651

SOLD TO:

57001806
DEES OIL CO INC
PO BOX 96
311 CITY AVE SOUTH
RIPLEY MS 38663

TOTAL QUANTITY: 300,000 LBS

COMMODITY: DEGUMMED SOYBEAN OIL

SCHEDULE 01
SCHED. QUANTITY: 300,000 LBS

TYPE: PRICED

CONTRACT BASIS: .0225
CBOT 09/2008

DELIVERY TERMS: FOB MEMPHIS TN

TRANSPORT MODE: TRUCK

WEIGHTS: Origin

SHIPMENT: 02/01/09 THRU 02/28/09

GRADES: Origin

OTHER CONDITIONS:

DELTA COM #9138

MERCHANDISER: BILL McBEE

NOPA Trading Rules to Govern

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Consolidated Grain & Barge, Inc.

By Seller	Date	By Buyer	Date
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14. If seller is required to seek Court Action or legal services concerning this Sales Contract, then Seller shall be entitled to its legal costs and attorney fees paid by the wrongfull party.
15. Any advance in applicable freight rates taking effect prior to passage of title hereof shall be for Buyer's account.

Deltacom, Inc.
 850 Ridge Lake Blvd., Ste. 1
 Memphis, TN 38120

Fax 901-761-8499
 Office Phone 901-761-8425
 Residence 901-757-5819
 Residence 843-342-5386

CONFIRMATION NO. 9139
 SELLERS CONTRACT NO 5914
 BUYERS CONTRACT NO

07/21/08

WE ARE PLEASED TO CONFIRM THE FOLLOWING:

SELLER - CONSOLIDATED GRAIN AND BARGE CO.
 P.O. BOX 289
 MT. VERNON, IN 47620-0289

BUYER - Dees Oil Co., Inc.
 Attn: Michael Dees
 P.O. Box 98
 311 City Ave South
 Ripley, MS 38663

COMMODITY - Crude Degummed Soybean Oil

QUANTITY - 500,000 lbs

PRICE - 63.75 cents per lb. Ex Tank ACBL Memphis, TN

CGB
 # 5914

SPECIFICATIONS - NOPA 103-3A

SHIPMENT - October 2008

WEIGHTS & GRADES - Ex Tank Weights & Grades

PAYMENT - Wire transfer prior to pick up

BROKERAGE - 10 cents per cwt.

OTHER CONDITIONS

BY: _____
 BUYER

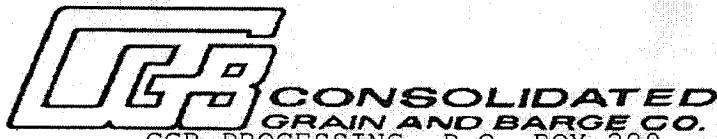
_____ SELLER

_____ AS BROKERS ONLY

SPECIAL CONTRACT TERMS

1. This contract shall be governed and construed in accordance with the applicable trading rules of the National Oilseed Processor's Association. Buyer acknowledges familiarity with said rules and except as modified or limited herein agrees to be bound by the terms and conditions thereof.
2. SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED INCLUDING THAT OF FITNESS FOR A PARTICULAR PURPOSE EXCEPT THAT SELLER WARRANTS THE PRODUCE SOLD HEREUNDER SHALL BE OF MERCHANTABLE QUALITY. BUYER ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED BY THE USE OF THE PRODUCT COVERED BY THIS CONTRACT WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS. SELLER SHALL IN NO EVENT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES AND BUYERS REMEDIES SHALL BE LIMITED TO REPLACEMENT OR ADJUSTMENT FOR DEFECTIVE PRODUCT AND IN NO EVENT EXCEED THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT.
3. This contract is specifically limited to the terms and conditions stated herein. The terms and provisions set forth herein shall prevail insofar as they may in any way conflict with any terms or conditions of buyers order or confirmation.
4. Sellers performance hereunder, including delivery on the date specified shall be excused where such failure to perform or delay is attributable to any cause or reason beyond its control including but not limited to product shortages, labor trouble, government regulations, transportation difficulties, acts of God, or other causes of like or different character beyond its control.
5. Once placed, an order may not be canceled by buyer except with the written consent of the seller.
6. If any tax, duty, or tariff, or increase thereof, is or shall be assessed or imposed on this transaction or any aspect thereof, or if any change shall be made in the present customs or railway classification of said goods or raw materials or existing freight rates, each such charge or change shall be for buyer's account.
7. Failure on the part of the seller to deliver or perform in accordance with any installment of this contract shall not be a breach of the entire agreement.
8. Seller's weights are to govern settlement. On sales made F.O.B. delivered basis, no allowance for shortage or damage shall be made by seller unless buyer furnishes acknowledgment from the carrier that the same occurred in transit. On sales made F.O.B. seller's plant or warehouse, buyer will, in the event of loss or damage in transit file its own claim with carrier.
9. Buyer waives all claims unless made in writing and delivered to seller within 10 days after receiving the goods. Any action by buyer for a breach of this contract must be commenced within one year after the cause of action has accrued.
10. Any change in price or other terms of this contract caused by government regulations will entitle seller, at its option, to cancel any unshipped portion thereof.
11. Seller warrants that it has complied with all federal laws, regulations, and orders issued pursuant to such laws which govern seller's performance hereunder.
12. In addition to the applicable trading rules of NOPA (National Oilseed Processor's Association) this agreement shall be governed by and construed in accordance with the Uniform Commercial Code and the laws of the State of Indiana.
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SALES
CONTRACT
CONFIRMATION



CGB PROCESSING P.O. BOX 289

MT. VERNON, IN 47620 812-838-6651

SOLD TO:

57001806
DEES OIL CO INC
PO BOX 96
311 CITY AVE SOUTH
RIPLEY MS 38663

TOTAL QUANTITY: 500,000 LBS

COMMODITY: DEGUMMED SOYBEAN OIL SCHEDULE 01 SCHED. QUANTITY: 500,000 LBS

TYPE: PRICED CONTRACT PRICE: .6375 PER LB

DELIVERY TERMS: FOB MEMPHIS

TRANSPORT MODE: TRUCK WEIGHTS: Origin

SHIPMENT: 02/01/09 THRU 02/28/09 GRADES: Origin

OTHER CONDITIONS:

DELTA COM #9139

MERCHANDISER: BILL McBEE

NOPA Trading Rules to Govern**This contract also includes, and is subject to, the terms and conditions on the reverse side.****Please sign and return one copy to: Consolidated Grain & Barge, P.O. Box 289, Mount Vernon, IN 47620****Consolidated Grain & Barge, Inc.**

By

Date

Seller

By

Date

Buyer

SPECIAL CONTRACT TERMS

1. This contract shall be governed and construed in accordance with the applicable trading rules of the National Oilseed Processor's Association. Buyer acknowledges familiarity with said rules and except as modified or limited herein agrees to be bound by the terms and conditions thereof.
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3. This contract is specifically limited to the terms and conditions stated herein. The terms and provisions set forth herein shall prevail insofar as they may in any way conflict with any terms or conditions of buyers order or confirmation.
4. Sellers performance hereunder, including delivery on the date specified shall be excused where such failure to perform or delay is attributable to any cause or reason beyond its control including but not limited to product shortages, labor trouble, government regulations, transportation difficulties, acts of God, or other causes of like or different character beyond its control.
5. Once placed, an order may not be canceled by buyer except with the written consent of the seller.
6. If any tax, duty, or tariff, or increase thereof, is or shall be assessed or imposed on this transaction or any aspect thereof, or if any change shall be made in the present customs or railway classification of said goods or raw materials or existing freight rates, each such charge or change shall be for buyer's account.
7. Failure on the part of the seller to deliver or perform in accordance with any installment of this contract shall not be a breach of the entire agreement.
8. Seller's weights are to govern settlement. On sales made F.O.B. delivered basis, no allowance for shortage or damage shall be made by seller unless buyer furnishes acknowledgment from the carrier that the same occurred in transit. On sales made F.O.B. seller's plant or warehouse, buyer will, in the event of loss or damage in transit file its own claim with carrier.
9. Buyer waives all claims unless made in writing and delivered to seller within 10 days after receiving the goods. Any action by buyer for a breach of this contract must be commenced within one year after the cause of action has accrued.
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SALES
CONTRACT
CONFIRMATION

DATE 07/21/08

CONTRACT
NUMBER 0005914

SOLD TO:

57001806
 DEES OIL CO INC
 PO BOX 96
 311 CITY AVE SOUTH
 RIPLEY MS 38663

CGB PROCESSING P.O. BOX 289
 MT. VERNON, IN 47620 812-838-6651

TOTAL QUANTITY: 500,000 LBS

SCHEDULE 01
 SCHED. QUANTITY: 500,000 LBS

COMMODITY: DEGUMMED SOYBEAN OIL

CONTRACT BASIS: .0225
 CBOT 10/2008

TYPE: PRICED

DELIVERY TERMS: FOB MEMPHIS

WEIGHTS: Origin

TRANSPORT MODE: TRUCK

SHIPMENT: 02/01/09 THRU 02/28/09

GRADES: Origin

OTHER CONDITIONS:

DELTA COM #9139

MERCHANDISER: BILL McBEE

NOPA Trading Rules to Govern

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Consolidated Grain & Barge, Inc.

By _____ Date _____
 Seller

By _____ Date _____
 Buyer

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